

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0192P

Income Tax

Calendar Year 1997, and Partial Years ending June 5, 1998, July 31, 1998, and December 16, 1998

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on an income tax assessment that resulted from a Department audit conducted for the calendar year 1997, and partial years ending June 5, 1998, July 31, 1998, and December 16, 1998.

The taxpayer owns real estate and is the contractual entity of rights of way, easements, real property leases, and hardware and software purchases. The taxpayer was merged into its parent on December 16, 1998. The parent is a telecom company which provides local, interstate, and international voice and data communication services to business and residential customers. The taxpayer has a sales office in Indianapolis, Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the error was the result of an unintentional error. The error occurred when the tax duties were neglected as a result of the tax duties being transferred from one corporate entity to another corporate entity.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.